

ESTATE & TRANSFER TAX
RCW 83.100

*(NOTE: see discussion below concerning the impact
of federal legislation in 2001 phasing out the federal estate tax.
This description addresses the state tax as it existed prior to 2002)*

Tax Base

Transfers of property belonging to persons domiciled in Washington at the time of their death. There are three separate statutes that comprise the estate and transfer tax:

RCW 83.100.030 - transfers of property belonging to persons living in the state at the time of their death.

RCW 83.100.040 - transfers of property located in the state belonging to nonresidents at the time of their death.

RCW 83.100.045 - "generation-skipping" transfers, e.g. distributions from trusts to grandchildren of the decedent.

Tax Rate

The estate tax levied by the state of Washington is equal to the amount of credit allowed under the federal estate tax for state estate taxes. The state tax, therefore, does not impose an additional tax on the estate but rather shifts revenues from the federal government to the state.

The amount of credit, as defined in the Internal Revenue Code as amended on January 1, 2001, is determined according to a graduated schedule depending upon the taxable value of the estate. Generally, the gross estate value is reduced by expenses of administering the estate (funeral costs, unpaid bills, etc.) and a further exclusion of \$60,000 is allowed in determining the adjusted taxable estate. Twenty different rates ranging from 0.8 percent to 16 percent are applied to the amount of the adjusted taxable estate in excess of \$40,000 to determine the amount of federal credit for state estate taxes.

In actual practice, as a result of the unified credit under previous federal law, estates below \$675,000 during calendar years 2000 and 2001 and \$700,000 in calendar year 2002 (further rising to \$1,000,000 by 2006) or estates passing to a spouse have been exempt from the federal tax and therefore were likewise exempt from the Washington tax. Estates over \$675,000 which were taxable under the federal tax were subject to graduated tax rates ranging from 18 to 55 percent.

However, in 2001 Congress adopted H.R. 1836 (PL 107-16) which includes a comprehensive phase out and eventual elimination of the federal estate tax by the year 2010. (However, the federal law is currently scheduled to expire at the end of 2010; thus the entire existing federal estate tax would again be effective in 2111, including the credit for state taxes, pending subsequent action by Congress.)

Under PL 107-16 the federal credit for state taxes will be phased out for decedents dying during 2002 (25%), 2003 (50%), and 2004 (75%). The existing state tax, consisting of the federal credit, would be entirely eliminated starting on January 1, 2005, although H.R. 1836 does allow a new deduction for state inheritance-type taxes.

Levied by State

Administration Department of Revenue. Administrators or personal representatives of estates must file the Washington estate tax return (Form #85 0037-1) with the Department at the same time a return is filed with the federal government. Administrators must include a copy of the federal estate tax return with their state tax return. If no return is required for federal estate tax purposes, then no state return is due. Delinquent returns are subject to interest based on the T-bill rate plus a penalty of 5 percent of the tax due for each month the return is late up to a total maximum penalty of 25 percent of the tax due or \$1,500, whichever is less. However, if the executor files the return voluntarily, no penalty will be assessed. When the estate tax liability has been fully satisfied, the Department issues a release stating that the decedent's property is free of any claim by the state.

Recent Collections (\$000)

<u>Fiscal Year</u>	<u>Collections</u>	<u>% Change</u>	<u>% of All State Taxes</u>
2001	\$107,097	29.5%	0.9%
2000	82,705	18.9	0.7
1999	69,570	(16.8)	0.6
1998	83,607	(5.1)	0.8
1997	88,069	41.8	0.8
1996	62,067	47.2	0.6
1995	42,160	19.4	0.4
1994	35,307	(1.5)	0.4
1993	35,836	4.0	0.4
1992	34,474	(29.4)	0.4

Exemptions, Deductions and Credits

- Estates not required to file a federal return.
- Credit for the lesser of: (1) amount of death tax paid in another state or (2) an apportioned amount based on the percentage of decedent's gross estate that is subject to tax in the other state.
- A reciprocal exemption for property of nonresident decedents which is located in this state to the extent that the decedent's state of residence allows estate tax exemptions for property of Washington residents.

History

The inheritance tax was one of the first state taxes established in Washington, adopted in 1901. In upholding the tax, a court ruling found that the inheritance tax constituted an excise tax upon the privilege of inheriting property and not a tax upon the property itself. This interpretation paved the way for adoption of future excise taxes, which now comprise the majority of all state taxes in Washington. The inheritance tax was applied according to three classes of beneficiaries, depending upon their relationship with the decedent. Initial tax rates ranged from 1 to 12 percent.

A companion gift tax was enacted in 1941 at rates equal to 90 percent of the inheritance tax rates.

There was relatively little change in the inheritance and gift tax until 1979, when the Legislature enacted a comprehensive revision of the tax, including a substantial increase in the basic exemption levels, phase out of the tax on community property, current use valuation for family farms and small businesses, and revision in the graduated rate schedule to reduce tax rates.

At the general election in November, 1981, the voters approved Initiative #402, which repealed the state inheritance and gift taxes, effective on January 1, 1982. The initiative provided for the current estate tax equal to the amount of federal estate tax credit.

In May, 2001 Congress adopted H.R. 1836 which phases out the federal estate tax and eliminates the federal credit for state taxes, thus effectively terminating the state tax (depending upon resolution of the conforming date issue and whether the state tax is linked to the Internal Revenue Code prior to the federal changes).

Discussion/Major Issues

The estate tax--commonly known as a "pick-up" tax--does not result in increased tax burden for estates but merely shifts a portion of the federal estate tax receipts to the state. Thus, it tends not to be an unpopular tax, as was its predecessor, the inheritance tax.

Twenty-eight other states have estate taxes equal to the amount of federal credit similar to Washington. Four states levy separate taxes upon estates (three of these have additional estate taxes equal to the amount of federal credit). The remaining 17 states impose an inheritance tax, similar to the former tax in Washington, which varies depending upon the relationship between beneficiaries and the decedent.

Approximately 2,600 estates currently file with the Department each year. Determination of the taxable estate amount can be a complex process, but this must be done anyway for the majority of estates for purposes of the federal tax. Determination of the amount of the credit for state tax is comparatively easy. Personnel of the Department's Special Programs Division, who administer the tax, work with personal representatives of estates to determine the amount of tax that is due the state.

As indicated above, major changes are in store for Washington's estate tax, as a result of the phaseout and repeal of the federal estate tax by Congress. One major issue relates to the linkage between the state estate tax and the federal law. According to state law, the state tax is legally based on the federal tax as codified in the Internal Revenue Code as it existed on January 1, 2001 - prior to the federal tax changes enacted during 2001. Thus, it can be argued that in the absence of further amendment to the Washington law, the state tax would not be directly impacted by the pending phaseout of the federal tax. However, for this effect to be realized some administrative changes would be necessary, as the state would have to begin actually assessing the state estate tax. Alternatively, for the federal changes to impact the state tax, it is argued that a "conforming amendment" would be necessary to update the linkage between the state tax and the Internal Revenue Code, as it existed on January 1, 2002. It is likely that this issue will be addressed by the Legislature in 2002.